

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

Teron Alexander Francis, deceased,)
by Marcerlyn Francis as the)
Administratrix of the Estate, Goods,)
Chattels and Credits of)
Teron Alexander Francis, and)
Marcerlyn Francis, individually,)
Plaintiff,)
v.)
The Bronx Lebanon Hospital Center,)
Dr. Martin Luther King Jr., Health Center,)
Robert C. Bingham, D.D.S.,)
Arnold V. Homer, D.D.S.,)
Indranil Gupta, M.D.,)
Rajesh Shenoy, M.D.,)
and "John Doe", M.D., /D.D.S.,)
Defendants.)

Case No. 07 Civ. 9450 (GBD)(AJP)

DECLARATION OF
RICHARD G. BERGERON

1. I am a Senior Attorney in the General Law Division, Office of the General Counsel, Department of Health and Human Services (the "Department"). I am familiar with the official records of administrative tort claims maintained by the Department as well as with the system by which those records are maintained.
2. The Department's Claims Branch maintains a computerized database record of administrative tort claims filed with the Department, including those filed with respect to federally supported health centers that have been deemed to be eligible for Federal Tort Claims Act malpractice coverage.

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3. As a consequence, if a tort claim had been filed with the Department with respect to Dr. Martin Luther King Jr. Health Center a record of that filing would be maintained in the Claims Branch's database.

4. I caused a search of the Claims Branch's database to be conducted and found no record of an administrative tort claim filed by the estate of Teron Alexander Francis, Marcerlyn Francis or an authorized representative relating to Dr. Martin Luther King, Jr. Health Center.

5. I have also reviewed official agency records and determined that the Dr. Martin Luther King, Jr. Health Center, was first deemed eligible for Federal Tort Claims Act malpractice coverage effective January 1, 2004, and that this deemed status has continued without interruption since that date. Copies of the notifications by an Assistant Surgeon General, Department of Health and Human Services, to Dr. Martin Luther King, Jr. Health Center are attached to this declaration as Exhibit 1.

6. Robert C. Bingham, D.D.S., and Ranold V. Homer, D.D.S., were employed by the Dr. Martin Luther King, Jr. Health Center during the time alleged in the complaint and therefore have been deemed to be employees of the Public Health Service pursuant to 42 U.S.C. § 233 (g).

7. The Bronx-Lebanon Hospital Center, Dr. Indranil Gupta, and Dr. Rajesh Shenoy have not been deemed to be employees of the Public Health Service pursuant to 42 U.S.C. § 233(g) for purposes of this litigation.

I declare under penalty of perjury that the foregoing is true and correct. 28 U.S.C. § 1746.

Dated at Washington, D.C., this 30th day of August, 2007.



RICHARD G. BERGERON

Senior Attorney, Claims and Employment Law Branch
General Law Division
Office of the General Counsel
Department of Health and Human Services